**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE KURIAN JOSEPH**

**THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929**

**WP(C).No. 9502 of 2004(F)**
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**PETITIONER:**
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**GOPALAKRISHNAN, DRIVER OF POLICE BUS,**
**KIZHAKKEPATTU MELATHIL VEEDU, ALOMKODE.**

**BY ADV. SRI.A.KRISHNAN.**

**RESPONDENTS:**
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1. **KANAKAM (MINOR) D/O.VELLAPPAN,**
   **SUNIL NIVAS, PIRAYIRI, PALAKKAD, REPRESENTED**
   **BY HER NEXT FRIEND (FATHER) VELLAPPAN.**

2. **BABU, VALIYATH HOUSE,**
   **PATANI STREET, PALAKKAD.**

3. **ORIENTAL INSURANCE CO. LTD., PALAKKAD.**

4. **STATE OF KERALA, DISTRICT COLLECTOR,**
   **PALAKKAD.**

5. **THE STATE OF KERALA, REPRESENTED BY**
   **HOME SECRETARY, TRIVANDRUM.**

6. **THE THASILDHAR (R.R), PONNANI.**

**BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA),**
**ADV. SRI.P.T.JUDY.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.9502/2004:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE AWARD DTD. 29/06/1998.**

**EXT.P.2: COPY OF THE NOTICE DTD. 03/03/2004.**

**RESPONDENT'S EXHIBITS: NIL.**

**//TRUE COPY//**

**prv.**

**KURIAN JOSEPH, J.**

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**W.P. (C). NO. 9502 OF 2004**

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**Dated this the 12th day of July, 2007.**

**J U D G M E N T**

Petitioner is aggrieved by the revenue recovery proceedings initiated against him as per Exhibit P2. The liability arises out of Exhibit P1 Award passed by the Motor Accidents Claims Tribunal.

2. Petitioner was the driver of the Government vehicle-police bus which collided with the autorickshaw driven by the second respondent. First respondent who was travelling in the autorickshaw sustained injuries and she filed O.P. (MV) No. 22/1993 before the Motor Accidents Claims Tribunal, Palakkad. The petitioner was arrayed as third respondent. The Tribunal held that the respondents therein are jointly and severally liable along with the fourth respondent for 50% of the compensation. Fourth respondent is the State. There is no dispute that the vehicle was driven by the petitioner in connection with his official duty. As held by the Supreme Court in ***State of Maharashtra and Others vs. Kanchanmala Vijaysing Shirke and Others*** **[(1995) 5 Supreme Court Cases 659]** "once it is found and established that vehicle was

being used for the business of the employer, then the employer will be held vicariously liable even for the lapse, omission and negligence of his driver to whom the vehicle had been entrusted for being driven for the business of the employer". The Apex Court also held that the employer has to shoulder the responsibility in such situations.

Petitioner cannot be hence proceeded against as per the impugned proceedings merely on the basis of Exhibit P1 Award passed by the Motor Accidents Claims Tribunal.

This writ petition is disposed of as above.

**KURIAN JOSEPH, JUDGE.**

smp